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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

KARMA QUICK, Plaintiff and Respondent, v. JONATHAN FRIED, Defendant and Appellant.	A 151661 (San Francisco County Super. Ct. No. CGC12524113)

Jonathan Fried, the defendant in a lawsuit brought by a former employee, appeals an order he describes as having "denied" his motion to vacate a judgment entered against him based on matters deemed admitted by him pursuant to Code of Civil Procedure section 2033.280[1] after he failed timely to respond to requests for admissions.

A year into this case, after having actively litigated it for about two years, Fried disappeared from the scene for more than a year, during which time he failed to respond to multiple discovery requests and motions, communications from plaintiff's counsel and court orders. Fried wasn't dead or incapacitated. Indeed, a few months after he disappeared, Fried contacted plaintiff's counsel to complain that she was sending things to the "wrong" address. Yet he refused her request for an alternative to the post box address he had listed in court filings as his address of record and made no effort to change the service address on file with the court. Plaintiff thus had little choice but to continue serving papers on him at his address of record.

[1] Further statutory references are to the Code of Civil Procedure.

Fried finally resurfaced, but only after he was served with a judgment against him, one that was sizeable and based on requests for admission that had been deemed admitted because of his failure to respond. Subsequently, the court granted relief to Fried from the judgment and underlying discovery orders but conditioned that relief on his payment of attorney fees and costs as a sanction for the needless waste of time and resources he forced plaintiff to incur in efforts to obtain discovery and procure a judgment. Fried did not pay, and the trial court left the judgment intact. Fried has demonstrated no error in the court's order declining to vacate the judgment after Fried did not pay the sanction, and we affirm.

BACKGROUND

Plaintiff Karma Quick initiated this suit against Fried in September 2012, when she filed a complaint for breach of contract and multiple Labor Code violations for unpaid wages, arising from her employment as a legal assistant in Fried's law practice. Fried appeared in the action, and immediately moved (unsuccessfully) to dismiss it. For at least the next year and a half, he actively appeared in and litigated the case extensively, including prosecuting an unsuccessful cross-complaint.

In July 2014, the State Bar recommended Fried's disbarment. After that, as Quick's counsel later came to realize, Fried "went completely incommunicado," ceasing to respond to all written correspondence and disconnecting his phone line.

The November 2014 discovery motion and subsequent proceedings culminating with entry of the July 14, 2015 judgment against Fried: In August 2014, the month after the State Bar recommended Fried's suspension, Quick served a full round of written discovery on him, consisting of a set of requests for admissions (RFAs) as well as interrogatories and requests for the production of documents. Taken together, the RFAs asked Fried to admit his liability in full on each cause of action asserted against him (including by disavowing his affirmative defenses). In addition, RFA number 56 asked him to admit that Quick was entitled to monetary relief in specified amounts: specifically, that Quick "is entitled to recover from you total damages in the amount of

$1,089,516.90 and total civil penalties in the amount of $20,700, plus her attorney's fees and costs, as a result of your violations of law alleged in the complaint."

Fried did not respond or object to any of the written discovery; nor did he attempt to meet and confer about it with Quick's counsel. It appeared to Quick's counsel that Fried had "gone into hiding" and was just "ignoring the processes of the Court." So, in November 2014, Fried filed a motion asking the court to deem all her RFAs admitted pursuant to section 2033.280, as well as to compel further responses to her interrogatories and requests for the production of documents. Reciting Fried's past history of other discovery abuses that had necessitated a previous order compelling responses (for which the court had previously issued a monetary sanction), Quick also requested what she characterized as a "terminating sanction" of a "default judgment" under section 2023.010.[2]

Although her motion called this a terminating sanction, she explained that the result was compelled by her requests for admissions to which Fried had neglected to respond. She wrote: "Plaintiff . . . requests that the Court issue a terminating sanction by rendering a default judgment against the Defendant. As detailed in the Separate Statement of Discovery Requests and Responses in Dispute, filed concurrently herewith, the Requests for Admission which will theoretically be 'deemed admitted' at the conclusion of this motion suffice to establish Defendant's liability on all causes of action alleged in the complaint and waiver of all affirmative defenses alleged in the Answer. Additionally, Request for Admission No. 56 establishes the precise amount of damages and civil penalties to be assessed for the Defendant's unlawful conduct. *Thus, once the matters are deemed admitted, all that remains is for the Court to enter judgment in accordance with the admitted damages and claims*." (Italics added.) And, she added in a footnote, she would then have the opportunity as the prevailing party to move for her costs and attorney fees.

[2] Section 2023.010 defines the "misuses" of discovery for which sanctions, including terminating sanctions, are provided under sections 2023.030 and 2023.040.

The motion was served on Fried. He did not oppose it.

Around the same time in November 2014 (the record does not specify when, exactly), Fried called Quick's counsel to complain he was being served at "the wrong address" but refused to tell Quick's counsel his new address. Quick's counsel told Fried he would continue to be served at the address on file with the court until Fried corrected it (a post office box), but Fried never changed his address with the court until later (after a judgment had been entered against him).[3]

Fried did not appear at the hearing on Quick's discovery motion, and in an order dated December 16, 2014, the court granted that motion nearly in full. Although it denied Quick's request for terminating sanctions, it granted her request to compel Fried to respond to the outstanding written discovery by a date certain. It also deemed admitted all of her requests for admission. The effect of the latter was to establish Fried's liability on every cause of action Quick had asserted against him, to establish the amount of damages on those claims and to defeat his affirmative defenses. Quick's counsel served Fried with a notice of entry of the order.

Also, on December 16, 2014, the same day as the court issued its discovery order, Quick's counsel served a written statement of damages on Fried, specifying approximately $1.8 million in claimed damages, including $1 million in punitive damages.

Thereafter, Fried still did not respond to any of the outstanding discovery requests, violating the December 16, 2014 discovery order. Quick was thus required to file another motion, also served on Fried, in which she argued all the RFAs had been deemed admitted (and attached copies of them as well as the court's prior order), liability and damages were thus fixed, and "all that remains to bring this case to a conclusion is for the Court to enter judgment in accordance with the admitted claims and damages." Pursuant to that follow-up motion, on March 2, 2015, the court entered another order that gave

[3] In December 2014, Quick's counsel also began serving a duplicate copy of everything on Fried at a Miami, Florida address Fried had on file with the State Bar.

Fried yet another two weeks to comply with the outstanding written discovery requests.[4] The March 2, 2015 order also imposed what it referred to as a "terminating sanction" against Fried. However, the order specified that "The Court shall enter a default judgment in accordance with the matters already deemed admitted by this Court's December 16, 2014 Order on [Quick's] last motion to compel" and directed Quick to prepare and file a proposed judgment within 30 days.[5] This order, too, was served on Fried.[6]

Thereafter, on May 1, 2015, Quick filed two more motions, both noticed for July 14, 2015. One requested that the court enter a "default judgment" pursuant to the court's prior "terminating sanctions" order. The other was a request for attorney fees. Both were served on Fried. Fried filed no opposition to either motion and did not appear at the hearing.

At the July 14, 2015 hearing, which the court referred to as a "default judgment prove-up" hearing, Quick's counsel recited the history of the case and asked that judgment be entered in accordance with the matters already deemed admitted, in accordance with the prior court orders. The court agreed that the "evidence" (i.e., the admissions) supported the claimed damages and the requested judgment but noted that a default had not yet been entered, which it described as a procedural "wrinkle" that was due to "the unorthodox way that the case has gotten to this point." So, orally at the hearing, the court opted to strike Fried's answer and order a default entered before directing the entry of a judgment.

Thereafter, the court entered a written judgment against Fried on all causes of action in which it awarded Quick damages of $1,089,516.90 and civil penalties of

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[4] It is unclear why Quick continued to pursue additional discovery at this juncture given the deemed admissions; it could have been a precautionary measure in case Fried sought and obtained relief from the deemed admissions.

[5] Quick's counsel prepared and submitted a proposed judgment but was instructed by court staff to resubmit it in the form of a motion for the entry of a default judgment, accompanied by the requests for admission.

[6] Fried was also copied on an email transmitting the proposed order to the judge.

$20,700, "pursuant to the matters deemed admitted by the Court's December 16, 2014 Order." The judgment also awarded Quick $215,075 in statutory attorney fees and $973.11 in costs pursuant to her motion for fees and costs.

Fried's motions to vacate the judgment: About three months later, Fried filed a motion to vacate the judgment under section 473, subdivision (b). Its basis was vague, consisting of personal attacks on Quick and her counsel.[7] Fried also contended he had been away at sea, living on a boat "off the coast of Florida." He relied on section 473, subdivision (b), claiming the judgment was entered due to inadvertence, mistake and surprise and cited a declaration that failed to identify the nature of his "inadvertence, mistake [or] surprise." As to attorney fees and costs incurred by Quick, he claimed in conclusory fashion that they "could have been avoided and are therefore not recoverable." The court denied the motion on January 29, 2016, finding Fried had not shown "mistake, inadvertence, or excusable neglect" and the motion was untimely.

In April 2016, Fried filed a second motion, this one under section 473, subdivision (d), asking the court to set aside both the judgment and "the various orders of default" that preceded them, on the ground that all were "void." Fried's motion did not specify the particular orders he was challenging, but in context the motion clearly encompassed both the court's December 16, 2014 order granting Quick's motion to deem all RFAs admitted and the March 2, 2015 order directing the entry of a judgment in accordance with the matters deemed admitted, since without relief from both of those orders no relief could have been effectual.

It is this motion that culminated with the order now under review, and we refer to it as the "motion to vacate the judgment." Fried's motion advanced two theories: first, that the orders and judgment were void due to improper service, because Quick had served her various papers on the wrong address (mailed to his post office box which he

[7] He accused Quick, for example, of pursuing the judgment against him because "of feeling scorn upon defendant falling in love with another woman," of filing the motion to enter judgment "to avoid having to present real evidence to prove his [*sic*] case." He accused her and her counsel of unspecified "barratry" and "chicanery."

claimed had been closed as of October 31, 2014); and second, that the judgment was void under section 580 because default judgments may not award greater damages than specified in the complaint, as the judgment here did. The motion generated protracted briefing on a wide number of issues and multiple hearings and resulted in two orders.

On July 12, 2016, the trial court (the Hon. Harold Kahn, presiding) issued a two-and-a-half page decision conditionally granting Fried's motion. The court ruled that "allowing the judgment in favor of Ms. Quick in the amount of $1,326,265.01 to remain in effect would be a miscarriage of justice," because "[e]ven a cursory reading of the complaint shows that [her] damages are at most only a small fraction of the over $1 million in damages awarded in the judgment." Although the court determined it had authority to vacate the judgment, it ruled that "[e]quity . . . requires that Mr. Fried be held accountable for his own misconduct which led to the discovery orders and judgment."[8] Therefore, it ruled that "before those orders and judgment are vacated, Mr. Fried must: 1) pay all fees and costs incurred by Ms. Quick and her counsel as a result of his failure to respond to the discovery served on him and his other inactions that resulted in the judgment and 2) provide verified code-compliant non-evasive responses to all discovery previously served on him that he ignored." The court's order set deadlines and a further hearing and briefing schedule to determine the amount of Quick's attorney fees and Fried's compliance with these conditions.

Subsequently, on January 27, 2017, the court ruled that Fried had substantially complied with his court-ordered obligations to provide responses to Quick's five sets of discovery (despite the inclusion of what the court described as "highly offensive and abusive language" for which the court said Fried might have been professionally disciplined had he not already been disbarred), and it determined Quick had incurred

[8] Alternatively, Judge Kahn determined he had authority to vacate the judgment and the discovery orders because they "violate basic due process and are void." For reasons we will discuss, we do not agree that the judgment either violated due process or was void. We therefore need not address whether a court could impose conditions on vacating a void judgment.

$67,155.11 in reasonable attorney fees and costs due to what the court described as Fried's "inexcusable inaction that led to the entry of the judgment." The court directed Fried to pay that amount in full within three months as a condition to granting him relief.

After another flurry of briefing and further hearings on a motion for reconsideration by Fried attacking the January 27, 2017 order (still contending the judgment was void and asserting he was unable to pay), the court entered an order on May 9, 2017, declining to vacate the judgment because "[t]he parties agree that Mr. Fried has not made the required payment that was a condition of vacating the default judgment."

Fried had submitted a declaration stating he was "broken and penniless," lacked money or assets, was living on "distant family members" and friends and had debts he could not pay. Judge Kahn was not required to find his claim of abject poverty credible and apparently believed Fried could pay something. At the first of two hearings on the motion for reconsideration, the court observed "[i]t doesn't look like he made any effort to pay even a penny. That's the way it looks to me." It further expressed consternation that, while it felt the judgment was far too high, "that's where we are, and there are a lot of people who contributed to this, among whom are Mr. Fried, and I don't see any taking on of responsibility or accountability for his part of the problem. That's my view; and therefore, I think as an equitable matter, it would be inappropriate for me to just say, 'Okay, Mr. Fried, I'll just bring you back to where you were. It doesn't matter that you imposed lots of costs and hassle on everybody and a lot of wasted time. I'll just put you where you were because you say you're living in difficult financial circumstances.' [¶] To me that doesn't seem right on this record."

When, by the second hearing, Fried had still failed to make any payment, the court declined to vacate the judgment.

Fried then timely appealed the court's May 9, 2017 order.

DISCUSSION

Fried has raised a single issue on appeal. He contends "the court erred as a matter of law in refusing to set aside the default judgment of July 14, 2015 as Void from its

inception when in contravention of the Code of Civil Procedure [sections] 580[, subdivision] (a), 585[, subdivision] (b) and . . . 472[, subdivision] (d). All subsequent orders are therefore also Void, including the final order of May 9, 2017 denying Fried's motion to vacate default judgment." That contention, in turn, encompasses a single argument: that the court's failure to set aside the July 14, 2015 judgment "is clearly erroneous because the judgment awarded more than the sum demanded in the Complaint and the First Amended Complaint thereby being Void from its inception by [Code of Civil Procedure] § 580[, subdivision] (a) and § 585[, subdivision] (b)."[9]

First, the trial court did not decline to vacate the judgment. Rather, Judge Kahn ruled that he *would* vacate the judgment (and the order on which it was based, deeming admitted the requested admissions to which he failed to respond) *if* within three months Fried paid approximately $67,000 in attorney fees incurred as a result of Fried's failures to respond to discovery and participate in other proceedings for many months. Fried failed to pay those fees, and for that reason the court did not grant him the relief he sought.

Second, this was not a "default judgment" in the usual sense. It was a judgment entered on the basis of admissions Fried was deemed to have made when he failed altogether to respond to requests for admission.

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[9] The opening brief also asserts that the July 2015 judgment and two earlier orders "are Void due to the fact that there is no Proof of Service on Appellant in the Clerk's Transcript." We deem this point forfeited, however, because it is stated in a single conclusory sentence without any supporting legal authority or any record citations. (See *In re A.C.* (2017) 13 Cal.App.5th 661, 672; *Cassidy v. California Bd. of Accountancy* (2013) 220 Cal.App.4th 620, 628 ["We disregard assertions and arguments that lack record references [citation] or lack citations to legal authority"].)

The reply brief attempts to raise additional issues (most of which also are difficult to understand), which we decline to address because they were not presented in the opening brief and therefore are forfeited as well. (See *Hurley v. Department of Parks & Recreation* (2018) 20 Cal.App.5th 634, 648, fn. 10; *Mt. Hawley Ins. Co. v. Lopez* (2013) 215 Cal.App.4th 1385, 1426.)

Third, Fried has made no attempt to show that the order deeming the matters admitted was void. Nor has he addressed whether a judgment entered based entirely on deemed admissions is subject to section 580.

Finally, Fried has not even addressed, much less shown, that the court lacked authority to impose the condition that he pay the fees he caused Quick to incur as a condition of granting relief. Indeed, he does not mention the condition or his failure to comply with it at all.

"The most fundamental principle of appellate review is that 'A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.' " (*Grappo v. McMills* (2017) 11 Cal.App.5th 996, 1006.) In light of that presumption, "the burden is on [the appellant] to demonstrate error—and also 'prejudice arising from' that error." (*Ibid*.) By ignoring the full scope and context of the court's ruling, Fried has failed to demonstrate either.

We could stop there, but having conducted our own independent research and analysis, we also disagree with Fried on the merits.

Both parties approach the question here as one involving a "default judgment." Yet we have doubts that the judgment entered in this case is a default judgment in the usual sense, meaning one that is subject to the general limitation of section 580, subdivision (a) that "[t]he relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint." (See also § 585 [governing taking of default and entry of judgment after defendant "fails to answer the complaint"].) As Judge Kahn stated, rejecting defendant's contention that section 580 applied, "this was not a standard default judgment. This was a judgment that was obtained after requests for admissions were deemed admitted." As he also observed, "there's these requests for admissions that are deemed admitted. So that supersedes any obligation to have alleged the amounts in the complaint because the default judgment is based—can be based on the deemed admissions on the evidence. This is evidence."

Nor, despite confusion about this below, was this judgment entered as a "terminating sanction" for discovery abuse, which would be governed by section 580.

(See *Greenup v. Rodman* (1986) 42 Cal.3d 822, 827 [involving answer stricken for discovery violations pursuant to former Code Civ. Proc., § 2034, subd. (b)(2)(C).)[10] On the contrary, as the judgment recites, it was entered in favor of Quick and against Fried on each of the causes of action "in accordance with the matters *deemed admitted* by virtue of the Court's December 16, 2014 Order." (Italics added.)

It is true that the judge, at the final hearing before entering judgment, took certain steps *sua sponte*, such as striking Fried's answer and entering his default in what appears to be an abundance of caution. This would have been appropriate if the court had entered the judgment based on Fried's refusal to obey the court's orders compelling responses to Quick's *interrogatories and document requests*, but it did not. The court did not need to strike Fried's answer in order to enter a judgment based on deemed admissions. Indeed, unlike the remedies available in connection with other discovery tools, there is no statutory authority for striking a defendant's answer or imposing terminating sanctions as a consequence for a defendant's failure timely to respond to a request for admission. The general provision regarding discovery sanctions permits terminating sanctions only "[t]o the extent authorized by the chapter governing [the] particular discovery method" (§ 2023.030), and the provisions governing requests for admissions do not authorize such sanctions. (§§ 2033.280, 2033.410). Requests for admission are a different kind of discovery device than interrogatories and other discovery tools, and it is thus not surprising that the consequences of noncompliance are different.[11] Fried neither argues

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[10] See § 2023.030, subd. (d) [terminating sanctions, including the striking of a pleading or entry of a default judgment, authorized for misuse of the discovery process "[t]o the extent authorized by the chapter governing any particular discovery method"]; § 2030.290, subd. (c) [authorizing terminating sanctions for failing to obey order compelling answers to interrogatories]; § 2031.310, subd. (i) [same regarding inspection demands].

[11] Requests for admission are "different from other civil discovery tools such as depositions, interrogatories, and request for documents." (*St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 774.) Those other discovery tools " 'principally seek to *obtain* proof for use at trial. In marked contrast, admission requests seek to *eliminate* the need for proof: "[T]he purpose of the admissions procedure . . . is to

nor cite any authority, and we are aware of none, that section 580 applies to a judgment such as this one, entered pursuant to case-dispositive deemed admissions.

Nevertheless, it is unnecessary for us to decide whether section 580 does in fact apply to this judgment. That is because, even if section 580 applied and the judgment was void, the end result would have been the same, because the admissions themselves would still have been binding on Fried after Fried failed to pay sanctions as a condition of lifting them, and Quick could have sought a judgment based on those admissions.

To recap, the court deemed all of Quick's RFAs admitted in its December 16, 2014 order and specified in its judgment that it was entering judgment pursuant to those admissions—including an admission to RFA number 56 concerning the amount of monetary relief to which Quick was entitled. This was proper. If a litigant fails timely to respond to a request for admission, the propounding party may move the court for an order that "the truth of any matters specified in the requests be deemed admitted." (§ 2033.280, subd. (b); see *Stover v Bruntz* (2017) 12 Cal.App.5th 19, 30 (*Stover*).) Matters that are either admitted or deemed admitted by court order are "*conclusively established* against the party making the admission in the pending action," unless the admitting party obtains leave of court under section 2033.300 to amend or withdraw the admission.[12] (§ 2033.410, subd. (a), italics added; see *Stover*, at p. 30.) Here, once

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limit the triable issues and spare the parties the burden and expense of litigating undisputed issues." Sometimes, the admissions obtained will even leave the party making them vulnerable to summary judgment.' " (*Id*. at p. 775.) As one court has put it, "woe betide the party who fails to serve responses" in a timely manner, because the consequences can sometimes be fatal. (*Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 395-396, disapproved on other grounds in *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 982, fn. 12 (*Wilcox*).) It is entirely proper to propound requests for admissions that, "if deemed true, would result in the unconditional surrender of the party on whom they are served. For example, 'Admit that you have absolutely no grounds to prosecute [or defend] this case.' " (*Demyer*, at p. 396, fn. 8; see also *Wilcox*, at pp. 982-983 ["Parties often propound requests for admission covering the ultimate facts of the case that, if admitted, are outcome determinative"].)

[12] That section states: "(a) A party may withdraw or amend an admission made in response to a request for admission only on leave of court granted after notice to all

Quick secured an order deeming Fried's liability admitted on all causes of action and also deeming admitted the amount of monetary relief to which she was entitled, there was (as she told the trial court) nothing left to do but enter judgment in accordance with those matters. Since at that point Fried had not moved to withdraw his admissions, he was clearly bound by them.[13] (See, e.g., *Stover*, at p. 31 [mother who failed timely to respond to requests for admission regarding child care costs, and then failed to move for relief from court's order deeming those matters admitted, held to have admitted she incurred no child care costs].) In short, the trial court properly entered judgment against Fried not as a default (either as a discovery sanction or for failing to answer), but because his liability and damages had been conclusively established against him pursuant to statutorily specified procedures.

Next, by granting Fried's motion to vacate that judgment, the trial court in effect also agreed to vacate Fried's deemed admissions (and the judgment entered on them), but conditioned that relief on the payment of Quick's attorney fees. It had discretion to do this under section 2033.300, which expressly permits the court to "impose conditions" on a grant of such relief "that are just." (See footnote 12, *ante* [quoting section]; *Rhule v.*

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parties. [¶] (b) The court may permit withdrawal or amendment of an admission only if it determines that the admission was the result of mistake, inadvertence, or excusable neglect, and that the party who obtained the admission will not be substantially prejudiced in maintaining that party's action or defense on the merits. [¶] (c) The court may impose conditions on the granting of the motion that are just, including, but not limited to, the following: [¶] (1) An order that the party who obtained the admission be permitted to pursue additional discovery related to the matter involved in the withdrawn or amended admission. [¶] (2) An order that the costs of any additional discovery be borne in whole or in part by the party withdrawing or amending the admission." (§ 2033.300.)

[13] We recognize Quick styled her motion requesting the entry of judgment as one for the entry of a "default" judgment which we regard as a misnomer. The proper course might have been to label it one for summary judgment (since at that point, the undisputed facts entitled her to judgment as a matter of law), but no prejudice arose from that misnomer. It is obvious on the face of this record Fried was no more likely to oppose her noticed request for the entry of a judgment against him had she labelled that motion as one for summary judgment and provided a separate statement of facts tracking the admissions.

WaveFront Technology, Inc. (2017) 8 Cal.App.5th 1223, 1227-1228 [section 2033.300 gives court discretion to impose attorney fee award as condition to granting relief from admitted matters]; *Wilcox*, *supra*, 21 Cal.4th 973 [statute permitting withdrawal of admissions applies to admissions deemed admitted for failure to respond].) In fact, had Quick so requested, the court would have been *required* to impose monetary sanctions against Fried as a result of Quick having had to file a motion to have those matters deemed admitted in the first place. (See *Stover, supra,* 12 Cal.App.5th at pp. 31-32; § 2033.280, subd. (c) [providing for mandatory monetary sanction against party and/or attorney whose failure to serve a timely response to requests for admission necessitates a "deemed admitted" motion].)

This wasn't a "void" judgment in the sense that it was entered without due process. Fried was properly served in the action; and he was served with the discovery requests and given notice of all of the relevant motions at the only address ever on file with the court and *refused* to tell Quick's counsel his current whereabouts. In substance, the trial court determined that, in the circumstances, it would be equitable to relieve him of his own self-inflicted mistakes, particularly given the gravity of the damages imposed against him, yet also require him to pay for the consequences. This was entirely in keeping with section 2033.300.

Thus, even if the court were legally required to unconditionally vacate the *judgment* on the ground it was void, Fried has cited no authority precluding the court from conditioning relief from the underlying, case-dispositive *deemed admissions* on the payment of monetary sanctions. On the contrary, even in a true default context, "where the amount demanded must be set forth in the complaint and the plaintiff recovers a default judgment for more than that amount, *the underlying default is valid even if though the default judgment is void*." (*Van Sickle v. Gilbert* (2011) 196 Cal.App.4th 1495, 1521, italics.) Because Fried did not pay those sanctions, the deemed admissions remained operative, and a judgment in the plaintiff's favor based upon them inevitably would follow. Any technical error in declining to vacate the judgment before immediately

entering a new, identical one pursuant to the still-binding deemed admissions was harmless.

In substance, all that occurred here is that the trial court entered a judgment that was legally warranted in accordance with matters that had been conclusively resolved against Fried, and it then granted Fried relief from that judgment on conditions it was statutorily entitled to impose.

We are not insensitive to the strong policy of the law favoring the disposition of cases on their merits rather than by default, a policy that is reflected in countless cases including this court's recent decision in *Grappo*. (See also *Fasuyi v. Permatex, Inc.* (2008) 167 Cal.App.4th 681.) But the court properly conditioned relief from matters deemed admitted on Fried's compliance with the written discovery he had long ignored and payment of the attorney fees and costs he had forced Quick to expend, and it properly left intact a judgment based upon those deemed admissions when Fried failed to pay those appropriately awarded sanctions.

DISPOSITION

The May 9, 2017 order is affirmed.

STEWART, J.

We concur.

KLINE, P.J.

RICHMAN, J.